

COTTONWOOD HEIGHTS

RESOLUTION NO. 2009-09

A RESOLUTION APPROVING AND RATIFYING A LICENSE AGREEMENT WITH THE L.D.S. CHURCH (2009 BUTLERVILLE DAYS)

WHEREAS, the city council (the "*Council*") of the city of Cottonwood Heights (the "*City*") met in regular session on 24 March 2009 to consider, among other things, approving and ratifying a "License Agreement" (the "*Agreement*") with the Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints (the "*Church*") whereunder the Church would grant a temporary license to the City and its agents to use the exterior of the Church's real property located at or near 2561 Bengal Blvd. for a fireworks "safe zone" and launch site in connection with the City's "Butlerville Days" community event on or about 24 July 2009; and

WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to approve and ratify the City's entry into the Agreement as proposed;

NOW, THEREFORE, BE IT RESOLVED by the city council of Cottonwood Heights that the attached Agreement is hereby approved; that the City's mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of the City; and that any prior actions of the City's mayor and recorder in executing and delivering the Agreement on behalf of the City are hereby ratified.

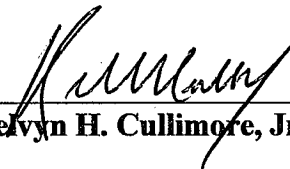
This Resolution, assigned no. 2009-09, shall take effect immediately upon passage.

PASSED AND APPROVED effective 24 March 2009.

COTTONWOOD HEIGHTS CITY COUNCIL




Linda W. Dunlavy, Recorder

By 
Kervyn H. Cullimore, Jr., Mayor

VOTING:

Kelvyn H. Cullimore, Jr.	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Gordon M. Thomas	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Don J. Antczak	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Bruce T. Jones	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

DEPOSITED in the office of the City Recorder this 24th day of March 2009.

RECORDED this 25 day of March 2009.

WST\CH\520180.1

License Agreement

THIS LICENSE AGREEMENT (this "*Agreement*") is entered into effective MARCH 16 2009, by and between the CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, whose address is 50 East North Temple, Salt Lake City, UT 84150 ("*Church*"), and by COTTONWOOD HEIGHTS, a Utah municipality whose address is 1265 East Fort Union Blvd., Suite 250, Cottonwood Heights, UT 84047 ("*City*").

RECITALS:

A. Church is the legal owner of a meetinghouse, seminary and park facility situated on real property (the "*Church Facility*") located at or near 2561 Bengal Blvd. in Cottonwood Heights, Utah.

B. City has scheduled its "Butlerville Days" community event (the "*Event*") for 24 July 2009 on the public property surrounding the Cottonwood Heights Recreation Center (the "*Event Site*"). The Church Facility is located adjacent to the Event Site. A site map for the Event is attached as an exhibit hereto.

C. City has retained Lantis Productions, Inc. ("*Lantis*") to provide all labor and materials required for a fireworks show (the "*Show*") to culminate the Event. After reviewing the surrounding properties, Lantis has advised City that the preferred location to launch the fireworks for the Show will be a portion of the Church Facility.

D. Consequently, City has requested Church's permission to use the exterior portions of the Church Facility as the fireworks launch site, and the "Fireworks Safe Zone," in connection with the Event. Church is willing to grant City such a license on the terms and conditions hereinafter set forth.

AGREEMENT:

NOW, THEREFORE, for the foregoing purposes and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Section 1. License. Church hereby grants to City and City's officers, employees, agents, representatives and contractors (including, without limitation, Lantis) an exclusive license (the "*License*") to use the exterior portions of the Church Facility (the "*License Area*") as the fireworks launch site and "Fireworks Safe Zone" in connection with the Event between the hours of 12:00 p.m. and 11:30 p.m. on 24 July 2009.

Section 2. City's Duties. City agrees as follows:

(a) Security. Throughout the Event, City shall secure the License Area and prevent unauthorized entry on the License Area, including traffic, pedestrian and parking control.

(b) Fire Protection. Throughout the Event, City shall cause the Unified Fire Authority's fire protection vehicles to stand by in close proximity to the License Area, ready to fight and extinguish any fire occurring on the License Area in connection with the Event.

(c) Cleanup. Within one business day after the Event, City shall cause the License Area to be cleaned of any paper or other debris resulting from the Event.

Section 3. **Insurance.** City shall cause the following insurance coverage to be in effect throughout the Event:

(a) **City's Insurance.** City shall maintain in full force and effect a policy of general liability insurance (the "*Liability Policy*") against claims for damage or injury to persons or property arising out of the use or occupancy of the License Area by City or its related parties in connection with the Event. The Liability Policy shall be maintained on the minimum basis of One Million Dollars (\$1,000,000.00) combined single limit. City shall provide to Church a certificate evidencing such insurance coverage at least three (3) days before the Event.

(b) **Lantis' Insurance.** City shall cause Lantis to maintain in full force and effect a broad form comprehensive workmen's compensation, bodily injury and property damage liability insurance policy or policies against claims for damage or injury to persons or property arising out of Lantis' use or occupancy of the License Area in connection with the Event. Such policy shall be maintained on the minimum basis of Five Million Dollars (\$5,000,000.00) combined single limit. Lantis shall cause City, Church and their designee(s) to be named as additional insureds under such policy. City shall cause Lantis to provide to Church a certificate evidencing such insurance coverage (including, without limitation, workmen's compensation coverage as required by applicable law) at least three (3) days before the Event.

(c) **Form of Policies.** All insurance required to be carried hereunder shall be with companies, on forms and with loss payable clauses reasonably satisfactory to Church. All such policies shall be written as primary policies, not contributing with and not in excess of coverage which Church may carry.

Section 4. **Hold Harmless Undertaking.** In consideration of the grant of permission by Church (or its affiliated property owner) to use the License Area on the date(s), at the time(s) and solely for the purposes described above, City agrees, covenants, and undertakes to indemnify, hold free and harmless, assume liability for, and defend Church (or its affiliated property owner), its affiliates, members, agents, servants, employees, officers, and representatives (collectively, the "*Indemnitees*") from any and all losses, costs, and expenses, including but not limited to monetary damages, attorney's fees, investigative and discovery costs, court costs, fines, penalties, increased taxes, and all other sums, that any of the Indemnitees may pay or become obligated to pay on account of any, all, and every demand for claim or assertion of liability, or any claim or action thereon, arising or alleged to have arisen out of the use by City or any of its guests, invitees, or licensees (including, without limitation, Lantis) of real or personal property belong to Church (or its affiliated property owner) in connection with the Event, and from any claim or action arising by reason of any act or omission by any of Indemnitees in connection with the Event. The undersigned represents and warrants to Church (or its affiliated property owner) that (a) City, Lantis and any other authorized user of the License Area under this Agreement has currently in effect and will maintain the liability insurance described above, with the Church or its designee named as an additional insured, and (b) that he or she is duly authorized to execute and deliver this undertaking and thereby to bind City.

The foregoing indemnities, etc. shall not, however, be deemed to waive or modify any rights, defenses, protections or limits of liability of City against third parties under the "Utah Governmental Immunity Act" (UTAH CODE ANN. § 63-30-1, *et seq.*).

Section 5. **Not a Public Dedication; No Third-Party Beneficiaries.** This Agreement does not effect any public dedication of any of the License Area. There are no third-party beneficiaries of this Agreement.

Section 6. General Provisions.

(a) Binding Agreement. This Agreement shall be binding upon and shall inure to the benefit of the successors, assigns, related parties and affiliates of the respective parties hereto.

(b) Captions. The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope or interpretation of any of the terms or provisions of this Agreement or the intent hereof.

(c) Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.

(d) Severability. The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable or invalid provision shall not affect the other provisions of this Agreement.

(e) Waiver of Breach. Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of, or consent to, any subsequent breach of this Agreement.

(f) Cumulative Remedies. The rights and remedies of the parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of, any other right, remedy or priority allowed by law.

(g) Amendment. This Agreement may not be modified except by an instrument in writing signed by the parties hereto.

(h) Interpretation. This Agreement shall be interpreted, construed and enforced according to the substantive laws of the state of Utah. This Agreement is the result of arms-length negotiation between sophisticated parties and their counsel. Accordingly, the identity of the actual "drafter" of this Agreement shall be inapplicable and immaterial in any actions or proceedings seeking to interpret or to enforce it.

(i) Attorneys' Fees. In the event any action or proceeding is taken or brought by either party concerning this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees, whether such sums are expended with or without suit, at trial, on appeal or in any bankruptcy or insolvency proceeding.

(j) Notice. All notices provided for herein shall be in writing and shall be given by first-class mail, certified or registered, postage prepaid, addressed to the parties at their respective addresses set forth above or at such other address(es) as may be designated by a party from time to time in writing.

(k) Time of Essence. Time is the essence of this Agreement.

(l) Costs. All costs and expenses, including attorneys' fees, incurred by each party in conjunction with this Agreement shall be paid by the party which has incurred such costs and expenses.

(m) Assignment. None of the parties may assign its rights or delegate its duties hereunder to a third party without the prior written consent of all of the other parties.

DATED effective the date first written above.

CHURCH:

**CORPORATION OF THE PRESIDING BISHOP
OF THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS**

By: 
Its: SALT LAKE BRANCH STAKE

CITY:

ATTEST:

COTTONWOOD HEIGHTS, a Utah municipality

By: _____
LINDA W. DUNLAVY, Recorder

By: _____
KELVYN H. CULLIMORE, JR., Mayor

WST/CH/518878.1